

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
ALLTEL Communications, Inc.)	DA 03-3825
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
And Rural Service Area Redefinition)	
In the State of Georgia)	

**COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the proceeding on the ALLTEL Communications, Inc. (ALLTEL) petition for designation as an eligible telecommunications carrier (ETC) and rural service area redefinition in the state of Georgia.¹ OPASTCO is a national trade association representing over 550 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All of OPASTCO's members

¹*Wireline Competition Bureau Seeks Comment on ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier and Rural Service Area Redefinition in the State of Georgia*, CC Docket No. 96-45, Public Notice, DA 03-3825 (rel. Nov. 26, 2003).

are rural telephone companies as defined in 47 U.S.C. §153(37). In addition, they are all ETCs in their respective service areas.

ALLTEL's application for ETC designation and rural service area redefinition in the state of Georgia should be stayed pending the resolution of the current proceeding that is considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating ETCs. Alternatively, ALLTEL's application should be denied unless and until a more complete public interest showing can be made that takes into account both the public benefits and the public costs of granting ETC status to ALLTEL.

II. COMMENTS

The applications of ALLTEL in Georgia and other states,² as well as similar requests made by Nextel Partners,³ mark a significant change in the type of commercial mobile radio service (CMRS) providers that are applying for ETC designation. Prior applications that have come before the Commission have primarily involved smaller regional CMRS providers.⁴ ALLTEL and Nextel are the first CMRS providers with large multi-state networks to file ETC applications with the Commission.

² To the best of OPASTCO's knowledge ALLTEL has applied to the FCC for ETC status in Alabama, Florida, Georgia, North Carolina, and Virginia. In addition, ALLTEL has filed ETC applications with the state public utility commissions in Arkansas, Louisiana, Michigan, Mississippi, South Carolina, West Virginia, and Wisconsin.

³ To the best of OPASTCO's knowledge Nextel has applied to the FCC for ETC status in Alabama, Arkansas, Florida, Georgia, New York, Pennsylvania, Tennessee, and Virginia. In addition, Nextel has filed ETC applications with the state public utility commissions in Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Nebraska, Texas, Vermont, West Virginia, and Wisconsin.

⁴ Other regional carriers that have applied to the FCC for ETC status in areas served by rural telephone companies include RCC Cellular, Cellular South, and Western Wireless Corporation. Numerous others have applied for and received ETC designations from state public utilities commissions.

The manner in which the Commission addresses these applications will therefore have a significant impact on the future funding demands of the High-Cost program.

If the Commission grants ALLTEL's application for Georgia and other similar applications that are currently pending, it will only serve to encourage additional CMRS providers, including other large national carriers, to apply as well. This is because once one CMRS provider obtains ETC status in a rural area, the other CMRS providers in the area will also be compelled to seek ETC designation in order to remain competitive.⁵ In addition, should it become apparent that funding is readily available to CMRS providers merely for the asking, carriers may be violating their fiduciary obligation to their shareholders if they chose not to apply.

Such a large-scale increase in ETC designation requests will surely hasten the rapid escalation of the size of the Universal Service Fund (USF) as predicted by OPASTCO and other parties.⁶ In its recent white paper *Universal Service in Rural America: A Congressional Mandate at Risk*, OPASTCO estimated that if all CMRS providers nationwide were to apply for and receive ETC status, the annual funding level of the High-Cost program would increase by approximately \$2 billion.⁷ This would seriously compromise the continued ability of the High-Cost program to ensure the

⁵ This is already occurring. For example, throughout Iowa many rural telephone company study areas have two, and in some cases even three mobile wireless providers that have been designated as ETCs. *See*, Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2004* (Oct. 31, 2003), Appendix HC03.

⁶ *See*, OPASTCO Comments in CC Docket No. 96-45 (filed May 5, 2003), pp. 10-11 (OPASTCO Portability Comments). *See also*, National Association of State Utility Consumer Advocates (NASUCA) Comments in CC Docket No. 96-45 (filed May 5, 2003), p. 3 (NASUCA Portability Comments).

⁷ Stuart Polikoff, *Universal Service in Rural America: A Congressional Mandate at Risk*, OPASTCO, (January 2003), p. 21.

provision of affordable and “reasonably comparable” services and rates to consumers in the most remote regions of the nation.

On February 7, 2003, the Federal-State Joint Board on Universal Service (Joint Board) issued a Public Notice which sought comment on numerous competitive universal service issues, including the process for designating ETCs and the methodology for calculating support in competitive study areas.⁸ Comments and reply comments have been filed in this proceeding, and the Joint Board conducted a hearing on these issues on July 31, 2003. It is quite possible that, as a result of this proceeding, there will be significant changes in the way in which competitive ETCs are designated, and in the level of support that they receive.

In their comments on Nextel’s ETC petitions for Pennsylvania and Virginia, Verizon recommended that until the issues being considered in the Joint Board Portability Public Notice are resolved, the Commission should stay the approval of additional ETC applications.⁹ OPASTCO believes that the public interest would be best served by preventing the USF from growing out of control at the same time that key policies related to universal service support levels and ETC designations are currently under review. Moreover, until these issues are resolved, it remains unclear how the Commission should evaluate whether or not the designation of an additional ETC would serve the public interest in any given rural service area. Thus, a stay on the review of pending ETC

⁸ *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, Public Notice, 18 FCC Rcd 1941 (2003) (Joint Board Portability Public Notice).

⁹ *See*, Verizon Comments in CC Docket No. 96-45 (filed July 7 and July 14, 2003), pp. 1, 8. This proposal is similar to one made by the National Telecommunications Cooperative Association (NTCA) in their reply comments to the Joint Board Portability Public Notice. *See*, NTCA Reply Comments in CC Docket No. 96-45 (filed June 3, 2003), pp. 22-23.

applications as proposed by Verizon and others would be one possible way in which this problem could be addressed.¹⁰

While these comments are not intended to debate the many nuances of considering the public interest when evaluating an ETC application, OPASTCO wishes to briefly comment on the manner in which ALLTEL justifies its application as being in the public interest. Section 214(e)(2) of the Telecommunications Act of 1996 requires that prior to designating an additional ETC in an area served by a rural telephone company, the Commission must find that such designation would be in the public interest. Within its application, ALLTEL argues that:

[d]esignating ALLTEL as an ETC in the State of Georgia would further the public interest by bringing the benefits of additional competition and service offerings to an underserved marketplace....Competition drives down prices and promotes the development of advanced communications as carriers vie for a consumer's business....Designating ALLTEL as an ETC will bring to consumers the benefits of competition, including increased choices, higher quality service, health and safety benefits, and lower rates.¹¹

Thus, ALLTEL's application is based entirely on vague generalities regarding the generic benefits of competition. There is no evidence that ALLTEL would broaden its service offerings or reduce its prices if it were granted ETC status. There is also no

¹⁰ There is a related precedent for staying the approval of additional ETC applications. In order to moderate the fund's growth during its pending Part 36 USF rulemaking proceeding, the Commission imposed an interim cap on USF support for local exchange carriers from January 1, 1994 until January 1, 1996. See, *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Report and Order, 9 FCC Rcd 303 (1993), Erratum (1993). After an initial extension, the interim cap was further extended until May 8, 1997, so as to facilitate the transition to the new universal service rules that were adopted at that time. See, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 11 FCC Rcd 7920 (1996).

¹¹ *Application of ALLTEL Communications, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Georgia* (filed Aug. 26, 2003), pp. 13-14 (ALLTEL Application).

indication that approval of ETC status for ALLTEL would materially increase the level of competition in the marketplace¹² or hasten the delivery of advanced services.

Furthermore, there is no discussion in ALLTEL's application of the public costs that would be incurred by providing high-cost support to ALLTEL for its existing customer base. In comments on the Joint Board Portability Public Notice, OPASTCO and other parties explained that a meaningful public interest analysis must address both the benefits and costs of designating an additional ETC in a rural service area, and that such a designation should occur only when the public benefits from supporting multiple providers exceed the public costs created by supporting multiple networks.¹³ Therefore, if the Commission decides not to stay all pending ETC applications, as suggested by Verizon and others, then the Commission should deny ALLTEL's application unless and until ALLTEL can make a meaningful demonstration that its designation as an ETC would serve the public interest.

¹² ALLTEL is only seeking ETC designation for the particular wire centers of the rural telephone company study areas that it already serves in their entirety. *See*, ALLTEL Application, p. 10. This request clearly indicates that ALLTEL is not interested in serving any new rural areas beyond those that it currently serves. Otherwise, ALLTEL would be requesting ETC status throughout the existing study areas of the affected rural ILECs.

¹³ OPASTCO Portability Comments, pp. 40-44. *See also*, NASUCA Portability Comments, pp. 8-11; CenturyTel Comments in CC Docket No. 96-45 (filed May 5, 2003), pp. 16-31; TCA Comments in CC Docket No. 96-45 (filed May 5, 2003), pp. 3-6; USTA Comments in CC Docket No. 96-45 (filed May 5, 2003), pp. 8-15; ICORE Comments in CC Docket No. 96-45 (filed May 5, 2003), pp. 10-16.

III. CONCLUSION

For the foregoing reasons, ALLTEL's application for ETC designation and rural service area redefinition in Georgia should be stayed pending the resolution of the current proceeding that is considering changes to the calculation of high-cost support for competitive ETCs and the development of policy guidelines for the review of ETC applications. Alternatively, the Commission should deny ALLTEL's application unless and until a more complete public interest showing is made which takes into consideration both the public benefits and the public costs of granting ALLTEL ETC status.

Respectfully submitted,

**THE ORGANIZATION FOR THE
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CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 12th day of January, 2004, to those listed on the attached list.

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